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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/023,977

12/21/2001

Kenneth G. Stewart III

6714/38242

8245

23646

7590

05/30/2006

BARNES & THORNBURG

750-17TH STREET NW

SUITE 900

WASHINGTON, DC 20006-4675

EXAMINER

WHITE, RODNEY BARNETT

ART UNIT

PAPER NUMBER

3636

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/023,977

Applicant(s)

STEWART ET AL.

Examiner

Rodney B. White

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 10-12, 14, 15, 17-22 and 24-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 10-12, 14-15, 17-22, and 24-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's arguments, see the Amendment, filed 03/21/2006, with respect to the rejection(s) of claim(s) 1-4 and 10-12, 14-15, 17-22, and 24-27 under various 102(b) and 103(b) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of art found in an updated search.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4, 11-12, 14-15, 18-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warren-Pfaeffle et al (U.S. Patent No. 5,820,152) in view of Hunter (U.S. Patent No. 2,625,987).

Warren-Pfaeffle et al teaches the structure substantially as claimed including a pair of padded crutch-shaped arm rests 90, at least one first telescoping tubular support

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98,100 affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, and a backrest but does not teach the base member. However, Hunter teaches such support device with a base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor so that a portable toilet can be used. It would have been obvious and well within the level of ordinary skill in the art to modify the armrest structure, as taught by Warren-Pfaeffle et al, to include a base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor so that a portable armrest can be affixed to the base, as taught by Hunter, since the base member would allow the structure taught by Warren-Pfaeffle et al to be used with a structure other than a water closet so that it could be rested on a seat surface and

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provide the proper and necessary support to the infirm or person with other handicaps or disabilities.

Claims 1-2, 4, 11-12, 14-15, 18-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown (U.S. Patent No. 4,770,410) in view of Hunter (U.S. Patent No. 2,625,987).

Brown teaches the structure substantially as claimed including a pair of armrests, at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, and a backrest but does not teach the base member. However, Hunter teaches such support device with a base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor so that a portable to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the armrest structure, as taught by Brown, to include a base member having a top surface, bottom surface and

side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor so that a portable armrest can be affixed to the base, as taught by Hunter, since the base member would allow the structure taught by Brown to be used with a structure other than a water closet so that it could be rested on a seat surface and provide the proper and necessary support to the infirm or person with other handicaps or disabilities.

Claims 1-2, 4, 11-12, 14-15, 18-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 2,625,987) in view of Warren-Pfaeffle et al (U.S. Patent No. 5,820,152).

Hunter teaches the structure substantially as claimed including a pair of arm rests 42, at least one base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor, and a backrest but does not teach at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-

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selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches. However, Warren-Pfaeffle et al teach at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the portable support device, as taught by Hunter, to include at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base

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member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, as taught by Warren-Pfaeffle et al, since the adjustable armrests would allow for selective adjustability and comfort to various sized persons with different comfort needs using the seat.

Claims 1-2, 4, 11-12, 14-15, 18-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 2,625,987) in view of Brown (U.S. Patent No. 4,770,410).

Hunter teaches the structure substantially as claimed including a pair of arm rests 42, at least one base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor, and a backrest but does not teach at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches. However, Brown teaches at



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least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, and back support between armrests to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the portable support device, as taught by Hunter, to include at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, as taught by Brown, since the

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adjustable armrests would allow for selective adjustability and comfort to various sized persons with different comfort needs using the seat.

Claims 1-2, 4, 11-12, 14-15, 18-20, 22, and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter (U.S. Patent No. 2,625,987) in view of Sully (U.S. Patent No. 3,382,000).

Hunter teaches the structure substantially as claimed including a pair of arm rests 42, at least one base member having a top surface, bottom surface and side with the bottom surface and sides being substantially devoid of any protrusions such that the base member is adapted to rest on a seat and the support device not extending to the floor, and a backrest but does not teach at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches. However, Sully teaches at least one first telescoping tubular support affixed to the base member and to one of the arm

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rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests are adjustable to be raised or lowered over a range of about 5 to 18 inches, wherein at least one of the first and second telescoping supports has a plurality of holes 54, each hole identifying one of the pre-selected positions, and a pin 50 releasably biased to engage one of the holes and releasably retain one of the first and second telescoping supports at one of the pre-selected positions to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the portable support device, as taught by Hunter, to include at least one first telescoping tubular support affixed to the base member and to one of the arm rests between a middle and a front end of the arm rest and closer to the front end than to the middle of the arm rest, at least one second telescoping tubular support affixed to one of the arm rests between the middle and a rear end of the arm rest and closer to the rear end to the middle of the arm rest, said first and second telescoping tubular supports being adjustable for selectively adjusting the height of the arm rests member to any one of a plurality of pre-selected positions, and whereby the arm rests are connected to each other via the first and second supports and the base member, wherein the arm rests

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are adjustable to be raised or lowered over a range of about 5 to 18 inches, as taught by Sully, since the adjustable armrests would allow for selective adjustability and comfort to various sized persons with different comfort needs using the seat.

Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Warren-Pfaeffle et al as applied to claim 1 above, and further in view of Bapst (U.S. Patent No. 6,367,875 B1).

Hunter in view of Warren-Pfaeffle et al teaches the structure substantially as claimed but does not teach the base having a non-skid type of material on the bottom surface. However, Bapst teaches such a 180,182 to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the base, as taught by Hunter in view of Warren-Pfaeffle et al, to include a non-skid type of material on the bottom surface, as taught by Bapst, since it would prevent the base from slipping when placed a seat that may be slipper to the base.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Sully as applied to claim 1 above, and further in view of Schmitz (U.S. Patent No. 5,833,309) and Reich (U.S Patent No. 4,790,042)

Hunter in view of Sully teaches the structure substantially as claimed but does not an attached mesh area-for comfort, the mesh area also being for holding a hot/cold pack container. However, Schmitz and Reich teach such pockets made of a umber of

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materials including mesh for holding a hot/cold pack container to be old. It would have been obvious and well within the level of ordinary skill in the art to modify the device, as taught by Hunter in view of Sully, to include the mesh area also being for holding a hot/cold pack container, as taught by Schmitz and Reich, since it would allow the backrest to be cooled or heated when needed.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art of record.

The above structures are perfectly capable of weighing less than or equal to but not more than 10 lbs. depending on the materials used, such as Brown which is made of lightweight aluminum and Warren-Pfaeffle et al which is made of molded plastic.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hitzelberger, McGregor et al, Hughes, Muller, Meyer, Szurszewski, Rodaway, Friedrich, Goletski, Matsude, O'Sullivan, Williams et al, Spear, Gardenr, and Robinson, teach structures similar to the present invention.

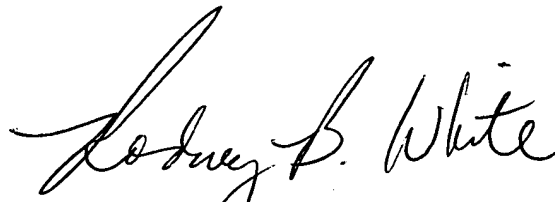
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney B. White whose telephone number is (571) 272-6863. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rodney B. White,  
Patent Examiner  
Art Unit 3636  
May 25, 2006



RODNEY B. WHITE  
PRIMARY EXAMINER